

Application No.: 10/733,621

Docket No.: HO-P02705US2

REMARKS

Claims 1, 3-22 and 35-37 are pending. Claims 1 and 35 have been amended without prejudice and without acquiescence to clarify the claim scope. Applicants retain the right to file a divisional and/or continuation applications from any canceled subject matter. No new matter has been added.

The issues outstanding in this application are as follows:

- Claims 1, 3-7, and 11-22 have been rejected under 35 U.S.C. §102(e), as being anticipated by Kurzel et al. (US Patent Application No. US 2003/0056067).
- Claims 35-36 have been rejected under 35 U.S.C. §103(a), as being unpatentable over Olmarker et al. (WO 02/080891) in view of Hanson et al. (WO 00/01730).
- Claims 1, 3-22 and 35-37 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 and 12 of co-pending Application No. 10/862,213, which is published as US 2005/0019342.

Applicants respectfully traverse the outstanding rejections and objections, and applicants respectfully request reconsideration and withdrawal thereof in light of the amendments and remarks contained herein.

I. 35 U.S.C. §102(b)

Claims 1, 3-7, and 11-22 are rejected under 35 U.S.C. §102(e), as being anticipated by Kruzel et al. (US Patent Application No. US 2003/0056067) Applicants respectfully traverse.

In order to advance the prosecution of the present invention, Applicants have amended without acquiescence and without prejudice independent claim 1 to indicate that the pain is associated with cancer or surgery, which is not taught or suggested in Kruzel et al. Applicants assert that Kruzel et al. does not identify, mention or suggest the use lactoferrin to treat pain is associated with cancer or surgery. If the Examiner continues to maintain this rejection, then Examiner is requested to make of record the passage relied upon, or state for

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the record that no such teaching can be found in the Kruzel. See, *In re Gartside*, 203 F.3d 1305, 53 USPQ2d 1769 (Fed. Cir. 2000).

In view of the amendments contained herein, Applicants assert that Kruzel et al. do not anticipate independent claim 1, and thus, Applicants respectfully request that the rejection be withdrawn.

II. 35 U.S.C. §103(a)

Claims 35-36 have been rejected under 35 U.S.C. §103(a), as being unpatentable over Olmarker et al. (WO 02/080891) in view of Hanson et al. (WO 00/01730). Applicants respectfully traverse.

In order to advance the prosecution of the present invention, Applicants have amended without acquiescence and without prejudice independent claim 35 to indicate that the pain is associated with cancer, disorders of the central nervous system or surgery, which is not taught or suggested in Olmarker et al nor Hanson et al. Applicants assert that neither Olmarker et al. nor Hanson et al identify, mention or suggest the use lactoferrin to treat pain associated with cancer, disorders of the central nervous system or surgery. If the Examiner continues to maintain this rejection, then Examiner is requested to make of record the passage relied upon, or state for the record that no such teaching can be found in the Olmarker et al. nor Hanson. See, *In re Gartside*, 203 F.3d 1305, 53 USPQ2d 1769 (Fed. Cir. 2000).

In view of the amendments contained herein, Applicants respectfully request that the rejection be withdrawn.

III. Double Patenting

Claims 1, 3-22 and 35-37 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 and 12 of co-pending Application No. 10/862,213, which is published as US 2005/0019342.

Since the co-pending application may never actually issue, or, alternatively, the claims as originally filed may be amended during the course of prosecution of the co-pending application such that the claims, when issued, no longer impact Applicants' claims, the

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rejection remains "provisional" until the co-pending application issues. As such, Applicants are not required to address the merits of the provisional double-patenting rejections until such time as the co-pending applications actually *issue*.

In view of the above, Applicants submit that they have acknowledged the provisional double-patenting rejections and, further, that it is clear Applicants are not required to address the merits of the provisional double-patenting rejections until such time as the co-pending application(s) issue and the rejections are made non-provisional. Thus, Applicants request that this provisional rejection be withdrawn.

CONCLUSION

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2375, under Order No. HO-P02705US2 from which the undersigned is authorized to draw.

Dated: September 12, 2005

Respectfully submitted,

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